

**New Mexico State Legislature  
Tobacco Settlement Revenue Oversight Committee**

**2003  
INTERIM REPORT**

*Legislative Council Service  
411 State Capitol  
Santa Fe, New Mexico*

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## **Work Plan, Meeting Schedule & Budget**

**2003 APPROVED**  
**WORK PLAN, MEETING SCHEDULE AND BUDGET**  
**for the**  
**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

The committee members are:

Rep. Gail C. Beam, Co-chair  
Sen. Mary Jane M. Garcia, Co-chair  
Sen. Ramsay L. Gorham

Sen. Richard C. Martinez  
Rep. J. Paul Taylor  
Rep. Gloria C. Vaughn

**Advisory Members**

Sen. Manny M. Aragon  
Sen. Joseph J. Carraro  
Sen. Dede Feldman

Sen. Steve Komadina  
Sen. Linda M. Lopez

Senate Bill 298 (Laws 2003, Chapter 312) transfers all tobacco settlement revenues received in fiscal years 2003 through 2006 to the general fund, discontinuing the transfer of 50 percent of the revenues to the tobacco settlement program fund until fiscal year 2007. However, since many of the programs previously funded by the program fund continue to be funded through the general fund, the committee will continue its oversight duties over those programs. The committee will make recommendations, based on its evaluations, for program funding levels for the next fiscal year. Specifically, the committee proposes to:

(1) determine which of its recommended programs were actually funded, maintain its oversight of those programs by hearing testimony, reviewing reports and performance measures, where applicable, and evaluating the current and future success of the programs;

(2) develop recommendations on program funding for fiscal year 2005, including funding levels and changes in the purposes or programs to be funded. The committee shall provide its recommendations to the legislative finance committee no later than December 15, 2003;

(3) work with the attorney general's office on any legislation that may be necessary to ensure that New Mexico continues to receive the highest possible revenue from the tobacco settlement;

(4) examine issues relating to tobacco taxation on tribal lands; and

(5) recommend legislation or changes to existing legislation, if any.

## **PROPOSED 2003 MEETING SCHEDULE AND BUDGET**

One-day meeting in Santa Fe (June 20)

One-day meeting in Santa Fe (August 11)

One-day meeting in Albuquerque (September 15)

One-day meeting in Santa Fe (November 4)

**TOTAL BUDGET**

**\$7,500.00\***

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\*This amount does not include the \$2,971.88 budget required for advisory members.

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## Agendas

**Revised: June 18, 2003**

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 20, 2003  
Room 309, State Capitol**

**Friday, June 20**

- |            |   |
|------------|---|
| 10:00 a.m. | CALL TO ORDER — INTRODUCTIONS   |
| 10:05 a.m. | 2003 INTERIM PLAN<br>—RECAP OF 2003 SESSION<br>—DEVELOP WORK PLAN<br>—SET MEETING DATES<br>—Committee Members   |
| 11:00 a.m. | UPDATE FROM THE ATTORNEY GENERAL<br>—Glenn Smith, Deputy Attorney General   |
| 11:45 a.m. | PROGRAMS FUNDED BY TOBACCO SETTLEMENT REVENUE OR<br>AS RECOMMENDED BY TSROC<br>—Dona Wilpolt-Cook, State Budget Director, Department of Finance and<br>Administration |
| 1:00 p.m.  | ADJOURNMENT   |

**TENTATIVE AGENDA**  
**for the**  
**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 11, 2003**  
**Room 317, State Capitol**

**Monday, August 11**

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|------------|--|
| 10:00 a.m. | CALL TO ORDER  |
| 10:05 a.m. | DEPARTMENT OF HEALTH TUPAC PROGRAM STATUS<br>REPORT, UPDATE AND EVALUATION<br>—David Vigil, Chronic Disease Prevention and Control Bureau Chief<br>—Larry Elmore, Program Manager, Tobacco Use Prevention and Control<br>Program |
| 11:05 a.m. | DIABETES PROGRAM UPDATE AND EVALUATION<br>—Mary Frerichs, Program Manager, Diabetes Prevention and<br>Control Program  |
| 11:30 a.m. | HIV/AIDS PROGRAM UPDATE AND EVALUATION<br>—Don Torres, Infectious Disease Bureau, Acting Chief   |
| 12:00 noon | LUNCH  |
| 1:30 p.m.  | OVERVIEW OF THE TOBACCO MASTER SETTLEMENT<br>AGREEMENT<br>—Glenn Smith, Deputy Attorney General  |
| 2:00 p.m.  | UNM HEALTH SCIENCES CENTER STATUS REPORT, UPDATES<br>AND PERFORMANCE MEASURES<br>—R. Philip Eaton, MD, Vice President for Health Sciences  |
| 3:00 p.m.  | LOVELACE RESPIRATORY RESEARCH INSTITUTE STATUS<br>REPORT AND PERFORMANCE OUTCOMES<br>—Dr. Robert Rubin, President and CEO of Lovelace Respiratory<br>Research Institute<br>—Dr. Yohannes Tesfaigzi, Scientific Director          |
| 4:00 p.m.  | PUBLIC COMMENT   |
| 4:30 p.m.  | ADJOURNMENT  |



**TENTATIVE AGENDA**  
**for the**  
**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**  
**September 15, 2003**  
**Room 311**  
**State Capitol**

**Monday, September 15**

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|------------|--|
| 10:00 a.m. | CALL TO ORDER  |
| 10:05 a.m. | HUMAN SERVICES DEPARTMENT, BREAST AND CERVICAL<br>CANCER TREATMENT PROGRAM STATUS REPORT<br>—Caroline Ingram, Director, Medical Assistance Division  |
| 11:00 a.m. | DEPARTMENT OF HEALTH, BEHAVIORAL HEALTH<br>SERVICES DIVISION, STEPP AND SMARTMOVES PROGRAMS<br>STATUS REPORT<br>—Jose Esquibel, Staff Manager, Prevention Services Bureau  |
| 12:00 noon | LUNCH  |
| 1:30 p.m.  | TOBACCO SETTLEMENT REVENUE ESTIMATES — UPDATE ON<br>PERMANENT FUND<br>—Melissa Vigil, Department of Finance and Administration<br>—Steve Neel, Legislative Finance Committee   |
| 2:10 p.m.  | ATTORNEY GENERAL'S RECOMMENDED LEGISLATION:<br>ESCROW FUND AMENDMENT AND STATUTORY RELEASE BILL<br>—Glenn Smith, Deputy Attorney General<br>—Tony Ogden, Litigation and Compliance Counsel for NAAG Tobacco<br>Project   |
| 3:00 p.m.  | NON-PARTICIPATING MANUFACTURERS' OBJECTIONS TO THE<br>ATTORNEY GENERAL'S RECOMMENDED LEGISLATION<br>—John Underwood, Attorney-Lobbyist<br>—Tony Troy, Attorney for CITMA   |
| 3:30 p.m.  | PARTICIPATING MANUFACTURERS ON THE RECOMMENDED<br>LEGISLATION<br>—Bob Barberousse, Attorney, Brown & Williamson<br>—Luke Otero, Consultant, R.J. Reynolds<br>—John R. Long, Vice President and General Counsel, Liggett Group, Inc.<br>—Rob Wilkey, Commonwealth Tobacco |
| 4:00 p.m.  | PUBLIC COMMENT   |
| 4:15 p.m.  | ADJOURNMENT  |

Revised: November 18, 2003

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 21, 2003  
Room 311  
State Capitol**

**Friday, November 21**

10:00 a.m.	CALL TO ORDER
10:05 a.m.	NEW MEXICANS CONCERNED ABOUT TOBACCO —Cynthia Serna, Director —Nathan Bush, Policy Manager
10:30 a.m.	RECOMMENDATIONS FOR PROGRAM FUNDING —Committee Members and Staff
11:30 a.m.	ENDORSEMENT OF LEGISLATION —Committee Members and Staff
12:30 p.m.	ADJOURNMENT

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## Minutes

**MINUTES  
of the  
FIRST MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE  
June 20, 2003  
Santa Fe**

The first meeting of the tobacco settlement revenue oversight committee was called to order by Representative Gail C. Beam, co-chair, at 10:15 a.m. in room 309 of the state capitol.

**PRESENT**

Rep. Gail C. Beam, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Rep. J. Paul Taylor  
Rep. Gloria C. Vaughn

**ABSENT**

Sen. Ramsay L. Gorham  
Sen. Richard C. Martinez

**Advisory Members**

Sen. Joseph J. Carraro  
Sen. Dede Feldman

Sen. Manny M. Aragon  
Sen. Steve Komadina  
Sen. Linda M. Lopez

**Staff**

Maha Khoury  
Janet Peacock  
Cenissa Martinez

**Guests**

The guest list is located in the meeting file.

**Committee Business**

Representative Beam began the meeting by welcoming committee members and guests. Committee members and staff introduced themselves. Janet Peacock and Maha Khoury were invited to give a recap of relevant legislation passed in the 2003 general session and to go over a proposed work plan and schedule for the interim.

**Report from Staff**

Janet Peacock summarized Senate Bill 298 (Laws 2003, Chapter 312), a compromise measure in response to the governor's proposal to abolish the tobacco settlement funds. She explained that the tobacco settlement permanent fund is now designated as a reserve fund within the general fund, and that 100 percent of settlement revenues received will be transferred into the general fund for fiscal years 2003 through 2006. Beginning in fiscal year 2007, the flow of funds would revert to the prior procedures, with 50 percent being transferred to the tobacco settlement program fund and 50 percent remaining in the tobacco settlement permanent fund.

Maha Khoury summarized legislation sponsored by the committee that passed last session. She briefed the committee on the cigarette tax increase and the new distributions from

the increase going to the New Mexico finance authority for construction of improvements at the UNM health sciences center and department of health facilities. Bob Fontino of the UNM health sciences center stated that \$4.8 million would go to the UNM children's hospital and for critical care expansion. Senator Feldman requested information on which department of health facilities would be improved. The committee briefly discussed the issue of cigarette taxation on Indian lands. A motion was made and passed without objection that a letter addressing cigarette taxation on Indian lands be sent to the blue ribbon tax reform commission, the legislative council, the governor, the secretary of taxation and revenue, the attorney general and the Indian affairs department, and that the Indian cigarette tax issue be added to the work plan. In addition, a fourth meeting was requested. The committee went over the rest of the work plan, changed some dates and approved it with changes.

#### **Attorney General Status Report**

Deputy attorney general Glenn Smith thanked the committee for sponsoring the Escrow Fund Act, which passed last session, and the allocable share cap bill, which did not, and discussed the importance of both bills. He stated that both the attorney general's office and the taxation and revenue department need additional funding and staff to ensure the integrity of tobacco settlement revenues and to enforce the cigarette tax. Mr. Smith explained the tobacco lawsuit and the different kinds of manufacturers involved. Committee members requested that Mr. Smith come back at the next meeting and give a summary of the master settlement agreement.

#### **State Budget Director Report on Appropriations**

Dona Wilpolt-Cook, state budget director, department of finance and administration, went over her handout indicating the programs funded for fiscal year 2004 that were recommended by the committee last session. Not all programs recommended were funded and one program was funded that was not recommended by the committee. Committee members discussed matching funds for medicaid and for research with Wilpolt-Cook and Ms. Georgia Cleverley, bureau chief of the medicaid benefits bureau, who was in the audience. Representative Beam requested that, in the future, tobacco settlement revenue be indicated as the source of funding for these programs. Ms. Wilpolt-Cook stated that she would look into the possibility of having such a designation.

#### **Adjournment**

The committee adjourned at 12:50 p.m.

**MINUTES**  
**of the**  
**SECOND MEETING**  
**of the**  
**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**  
**August 11, 2003**  
**Santa Fe**

The second meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative Gail C. Beam, co-chair, at 10:20 a.m. on Monday, August 11, 2003, in Room 317 of the State Capitol.

**PRESENT**

Rep. Gail C. Beam, Co-Chair  
Sen. Richard C. Martinez  
Rep. J. Paul Taylor

**ABSENT**

Sen. Mary Jane M. Garcia, Co-Chair  
Sen. Ramsay L. Gorham  
Rep. Gloria C. Vaughn

**Advisory Members**

Sen. Joseph J. Carraro  
Sen. Dede Feldman

Sen. Manny M. Aragon  
Sen. Steve Komadina  
Sen. Linda M. Lopez

**Staff**

Maha Khoury  
Cenissa Martinez

**Guests**

The guest list is in the meeting file.

**Department of Health, Tobacco Use Prevention and Control (TUPAC)**

David Vigil, Chronic Disease Prevention and Control Bureau chief, and Larry Elmore, TUPAC program manager, went over the funding history of the program and spoke about the goals of the program. The first goal is to prevent smoking among youth. Mr. Elmore went over youth tobacco data and discussed how the program works. The second goal is to promote quitting strategies by advertising, billboards, education and the quitline. Mr. Elmore emphasized that calls to the quitline increase as the anti-smoking media increases. The third goal is eliminating exposure to second-hand smoke. A discussion ensued on the status of clean indoor air ordinances in several cities. Mr. Elmore informed the committee that the tobacco industry spends \$61.8 million annually on advertising in New Mexico and spoke of media campaigns against smoking by TUPAC and others. TUPAC receives some federal funding for media support and Centers for Disease Control and Prevention (CDC) funding for staff, buildings and implementing the programs.

Committee members stated that TUPAC and its contractors are doing a very good job, but in order to ensure that these programs continue, the committee needs hard data to provide to the legislature. Representative Beam requested that Mr. Vigil and Mr. Elmore distill the data

presented to the committee in order to show in a clear and concise manner the increase in the number of people quitting, the decline in youth smoking and other results. The presenters informed the committee that youth tobacco surveys are conducted every two years and that the next one will be conducted next year. The minimum CDC recommended funding for tobacco prevention and cessation is \$14.2 million for New Mexico, but that has not yet occurred. A discussion took place on chronic disease prevention efforts in the border area and Native American tobacco prevention and cessation efforts.

### **Department of Health, Diabetes Prevention and Control Program**

Ms. Mary A. Frerichs, program manager, went over some data and statistics regarding diabetes. One in 11 adults has diabetes; one in seven adults is obese; one in three Americans born in 2000 will develop diabetes; Native Americans and Hispanics are more at risk, with Hispanic women at the highest risk; and the number of overweight and obese persons is growing. The program has three major projects. The first is public education, to which a focus group approach and targeted campaigns have been added. The second is rural clinic support and development, which includes educator training, glucose meters, test strips and other support. Ms. Frerichs stated that it would require \$1.5 million annually to fund meters and strips for indigent patients. The Indian Health Service covers meters and strips for the Native American population. The third project is elementary schools. Physical education is needed in schools. The program receives around \$450,000 from the CDC, \$430,000 from the general fund and \$1 million from the tobacco settlement fund. Ms. Frerichs directed the committee to a report in the handout and a discussion ensued on the great need for diabetes prevention, control and treatment and the lack of resources. Representative Beam reminded the committee that it recommended that \$2 million be appropriated to diabetes programs during the last session.

### **Department of Health, HIV/AIDS Program**

Donald Torres, acting chief for the Infectious Disease Bureau, went over data on HIV/AIDS. Nationally, there are approximately 40,000 new cases of HIV infection per year, and the number is rising. Fifty percent of new cases are people under 25 years old. In New Mexico, there are over 3,000 known cases. This program serves 60 percent of known persons living with HIV/AIDS in the state, a good percentage compared to many states. The program receives CDC and general fund dollars as well as tobacco settlement money and leverages federal funds. It is ready to implement new CDC prevention initiatives. A discussion ensued on HIV education in schools and reducing the stigma to help in treatment and prevention.

### **Committee Business**

The committee approved the minutes of its first meeting and recessed for lunch from 12:30 p.m. to 1:35 p.m.

### **Attorney General, Master Settlement Agreement Overview**

Glenn Smith, deputy attorney general, went over the glossary of terms used in the master settlement agreement between most states and tobacco manufacturers. He discussed the model statute and the escrow fund in relation to non-participating manufacturers. He explained the allocable share bill that failed last session that the attorney general wants to pass this coming

session and the reasons why it is important to close this loophole. A discussion took place on various aspects of the master settlement agreement, which lawsuits are barred, the Illinois case against Phillip Morris and the securitization of settlement funds. Phillip Morris is responsible for a little over 50 percent of the settlement payments.

Representative Beam informed the committee that it is unnecessary to have another meeting with the Indian tribes about the cigarette tax issue and that Senator Garcia supports this move. Maha Khoury was invited to speak to the committee about the Indian tax issue and the presentation of this issue to the Selective Excise Tax Committee of the Blue Ribbon Tax Reform Commission. She will provide the committee with any handouts given by tribal representatives at that meeting.

### **University of New Mexico (UNM), Health Sciences Center**

Dr. R. Phillip Eaton explained the various programs funded partially or totally through tobacco settlement funds, the federal grants given to these programs and the increased funding that UNM will be seeking for some programs. A discussion ensued on federal grants, Medicaid funding and the possibility of providing the same quality of health care throughout the state via the Telehealth program. Dr. Cheryl Wilman explained various scientific research projects, innovations and the tremendous leverage of funds in genomics research. She spoke about research in drug-inhalation, such as in chemotherapy and other cancer therapies, which renders the drugs safer and more effective, and about a possible cure for cervical cancer. New Mexico can be the leading state in eradicating cervical cancer through its unique research and cancer program and due to its diversity as different ethnic groups get different kinds of cancer. Dr. Eaton stated that the funds from the tobacco settlement have been helpful in stabilizing and developing these research programs. There has been a decrease in federal funding to the National Institute of Health, which has helped to fund some of these programs. UNM collaborates with the Department of Health on developing literature for smoking cessation and helps to evaluate some programs. A discussion ensued on health care delivery in southern New Mexico and the instability of Memorial Medical Center in Las Cruces. UNM has been collaborating with New Mexico State University to help solve the problems facing Memorial Medical Center.

### **Lovelace Respiratory Research Institute (LRRI)**

Dr. Robert Rubin, president and CEO of LRRI, and Dr. Yohannes Tesfaigzi, scientific director of LRRI, spoke about the use of tobacco settlement funds by the institute. The only mission of LRRI is to prevent and cure respiratory disease. LRRI leverages federal and private money for its research. There is an emphysema research program and a continuing lung cancer study of women. Dr. Tesfaigzi may have found a gene that makes a person more susceptible to emphysema and chronic bronchitis. A patent has been filed. The institute also discovered two new tests for predicting lung cancer and emphysema. One is a genetic test. The lung tissue regeneration approach did not work and research on it was dropped. However, it led to the discovery that certain kinds of animals are more susceptible to lung disease than others. In Australia, all children are tested at birth for a certain type of emphysema. This has impacted tobacco use in Australia. According to the last census, 100 million Americans are present or past



users of tobacco.

A discussion took place on various genes and gene markers in relation to lung disease, lung cancer research, leveraging state funding, and economic development and new jobs. LRRI requested continued funding of \$1 million from the tobacco settlement fund for its research.

**Adjournment**

The committee adjourned at 4:10 p.m.

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**MINUTES  
of the  
THIRD MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE  
September 15, 2003  
Santa Fe**

The third meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Senator Mary Jane M. Garcia, co-chair, at 10:10 a.m. in Room 311, State Capitol.

**PRESENT**

Rep. Gail C. Beam, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Sen. Ramsay L. Gorham  
Rep. J. Paul Taylor  
Rep. Gloria C. Vaughn

**ABSENT**

Sen. Richard C. Martinez

**Advisory Members**

Sen. Joseph J. Carraro

Sen. Manny M. Aragon

Sen. Dede Feldman

Sen. Steve Komadina

Sen. Linda M. Lopez

**Staff**

Maha Khoury  
Cenissa Martinez

**Guests**

The guest list is located in the meeting file.

**Human Services Department, Medical Assistance Division**

Caroline Ingram, director, and Roger Gillespie, deputy director, both of the Medical Assistance Division of the Human Services Department, updated the committee on the breast and cervical cancer treatment program. The program started in July 2002, and 82 percent of program costs are paid by the federal government. They discussed eligibility for the program. One hundred eighty-eight women have been screened for breast and cervical cancer through the program. Services are provided for pre-cancerous conditions. Discussions ensued on tobacco settlement funding, income eligibility requirements and whether physicians throughout the state are aware of this program. The committee discussed possible Medicaid cuts and whether this program is on the list of programs that may be cut by the governor.

**Department of Health, Behavioral Health Services Division**

Pilo Bueno, program manager, and Jose Esquibel, staff manager, both of the Prevention Services Bureau of the Behavioral Health Services Division of the Department of Health, described the bureau's duties and went over their handouts. They described the State Tobacco

Education and Prevention Program (STEPP) and its implementation, outcome, evaluation and findings. This program produced good results in smoking prevention and cessation, and included a media campaign. Two hundred fifty thousand dollars was given to this program for fiscal year 2003 but it was not funded for fiscal year 2004. The New Mexico Alliance of Boys and Girls Clubs ran the SMART Moves Program in fiscal year 2003 and was given \$600,000 for that year. Good results came from this program as well. Mr. Bueno discussed the goals of the SMART Moves Program for fiscal year 2004. This program was given \$1 million for that year. Both Mr. Bueno and Mr. Esquibel described how the language that appropriated \$1 million to SMART Moves was too narrow and gave the division no discretion in where the money should go or how it should be spent. The language in the legislation tied their hands such that they had no choice but to give the contract to the Alliance of Boys and Girls Clubs. Discussions ensued on the difference between these programs and other prevention and cessation programs, such as TUPAC and outreach to schools.

### **Committee Business**

The committee approved the minutes of its second meeting, changed the date of the fourth meeting from November 4 to November 21, 2003 and recessed for lunch from 12:00 noon to 1:40 p.m.

### **Update on Tobacco Settlement Funds**

Melissa Vigil, Department of Finance and Administration, and Steve Neel, Legislative Finance Committee, went over the history of the tobacco settlement funds and the settlement revenue forecast. Payments made in fiscal years 2003 through 2006 will be deposited in the general fund. There is \$62.2 million in the Tobacco Settlement Permanent Fund, which is now part of the general fund reserves. Beginning in fiscal year 2007, the fund will revert one-half of payments received to the Tobacco Settlement Program Fund and one-half to the Tobacco Settlement Permanent Fund. Mr. Neel went over the adjustment factors and risk forecasts to the settlement payments.

### **Attorney General Bills: Escrow Fund Amendments and Statutory Release Bill**

Glenn Smith, deputy attorney general, and Tony Ogden, litigation and compliance counsel for the National Association of Attorneys General (NAAG) Tobacco Project, discussed the need for quarterly rather than annual payments into the escrow fund by non-participating manufacturers (NPM). NPMs can escape their escrow obligations if they operate for less than one year or change ownership before the payment is due. The Allocable Release Bill is designed to close a loophole in the model legislation. The current law does not take into account how much of the NPMs' market was actually in New Mexico. Seventeen states have enacted this bill. The purpose of the escrow fund is to have a fund against which the state can recover a judgment against the NPMs. NAAG does not know who all the NPMs are. There are several hundred, and a majority of them are not located in this country.

### **Council of Independent Tobacco Manufacturers of America**

John Underwood, attorney-lobbyist, introduced Tony Troy, attorney for the Council of Independent Tobacco Manufacturers of America (CITMA), who argued that the settlement agreement was due to the conduct of tobacco manufacturers, not due to the sale of tobacco. The deleterious effects of tobacco are paid for by tobacco taxes imposed by states. The bills advanced by NAAG are for propping up the market share of big tobacco companies, which has slipped since 1998. Mr. Troy then gave a short history of the settlement agreement. He argued that NPMs are paying more than the participating manufacturers. CITMA does not object to quarterly payments if they are imposed at the discretion of the attorney general for bad actors. Committee members questioned Mr. Troy about the identity of his clients and he responded that members of CITMA are reluctant to reveal themselves because they fear retaliatory action. He said that there are 12 to 14 CITMA members and they are domestic, not foreign, companies. He agreed to provide a list of its members. Committee members expressed their concern about CITMA's membership not being known. Co-chair Beam asked Mr. Troy to respond to the quarterly payment bill when he provides a list of CITMA members to the committee.

### **Subsequent Participating Manufacturers (SPM)**

Michael Johnson, Santa Fe Natural Tobacco Company, an independent subsidiary of R.J. Reynolds, stated that his company supports these bills and that it paid \$11 to \$13 million into the settlement agreement this year. John Long, Liggit Group, stated that many small tobacco companies support this legislation. These bills help to provide a level playing field among the various manufacturers. NPMs are paying one cent on each dollar that participating manufacturers pay. Many NPMs would not be in business if not for this loophole. Rob Wilkey, Commonwealth Tobacco, serves in the house of representatives in Kentucky. It is a small company. It paid \$120 million into the agreement this year. It abides by the agreement's restrictions on advertising and marketing and it is in favor of this legislation. These bills will not put the NPMs out of business. The bills simply implement the intent of the settlement agreement to level the playing field by requiring escrow payments. Nick Allard, Top Tobacco, stated that his company has less than one percent of the market and it is making substantial payments. Small companies that are SPMs are hurting the most. They are the ones that brought the issue to NAAG. Top paid over \$5 million into the agreement last year. Foreign tobacco manufacturers are pouring their products into this country. Price makes a difference to kids who may start to smoke. Top is in favor of these bills. Mr. Wilkey stated that many companies set up several shell companies that disappear before it is time to make the escrow payment. At this time, they can operate up to 15 months without making a payment. Quarterly payment requirements would prevent this from happening. Discussions ensued on the reasons SPMs joined the agreement.

### **Public Comment**

Nathan Bush, New Mexicans Concerned About Tobacco, stated that his organization has no position on these bills at this time.

### **Committee Business**

The committee adjourned at 4:30 p.m.

**MINUTES  
of the  
FOURTH MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE  
November 21, 2003  
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative Gail C. Beam, co-chair, at 10:15 a.m. on November 21, 2003 in Room 311 of the State Capitol.

**PRESENT**

Rep. Gail C. Beam, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Sen. Ramsay L. Gorham  
Sen. Richard C. Martinez  
Rep. J. Paul Taylor  
Rep. Gloria C. Vaughn

**ABSENT**

**Advisory Members**

Sen. Manny M. Aragon  
Sen. Joseph J. Carraro  
Sen. Dede Feldman

Sen. Steve Komadina  
Sen. Linda M. Lopez

**Staff**

Maha Khoury  
Elizabeth Holmes

**Guests**

The guest list is located in the meeting file.

**New Mexicans Concerned About Tobacco (NMCAT)**

Cynthia Serna, NMCAT director, and Nathan Bush, NMCAT policy manager, acknowledged and commended the committee for its work through the years. They went over their presentation as in the handout given to the committee. They went over the success in reducing the use of tobacco in New Mexico in both youth and adults and the indoor air policies adopted by many cities in the state. NMCAT supports the Centers for Disease Control and Prevention's best practices on reducing tobacco use and commends TUPAC for closely adhering to these practices. A poll NMCAT has taken indicates that 75 percent of registered voters support the increase of funding to TUPAC to \$14 million or more. NMCAT would be happy with an increase to \$8 million for the next fiscal year. Ms. Serna and Mr. Bush discussed why it is important to increase TUPAC funding now. Larry Elmore, program manager of TUPAC, discussed how TUPAC would use the increase in funding from \$5 to \$8 million. NMCAT also recommends increasing the tobacco products tax as was recommended by the Blue Ribbon Tax Reform Commission during this interim. Increasing the tobacco products tax would not only

bring approximately \$3 million to the state, but would also help reduce smokeless tobacco use and deter consumption. Studies suggest that smokeless tobacco use increases when the excise tax on cigarettes goes up. Smokeless tobacco is used more in rural areas. NMCAT showed polling results indicating that the public favors a tax increase on smokeless tobacco products across party lines. Discussions ensued on other health concerns, Medicaid, the financial health of the state, Indian land exemption for the cigarette tax, vending machines and related tobacco and health issues.

### **Committee Business**

The committee approved the minutes of its third meeting.

### **Funding Recommendations**

Maha Khoury, committee staff, went over two possible options, prepared pursuant to the direction of the co-chairs, on what funding recommendations the committee would make to the Legislative Finance Committee. The committee discussed the various programs funded, and after motions and amendments were discussed and voted upon, the committee voted to adopt option 2 as presented in the green sheet as its recommendations to the Legislative Finance Committee.

### **Consideration and Endorsement of Legislation**

Ms. Khoury went over the escrow fund amendment bill that allows the attorney general to require quarterly payments into the escrow fund from non-participating manufacturers. Glenn Smith, deputy attorney general, and John Underwood, attorney and lobbyist for the Council of Independent Tobacco Manufacturers of America (CITMA), presented their views on the bill. Mr. Underwood was questioned on why CITMA has not provided a list of its members to the committee. He stated that he did not know why and will check on that. An amendment to the bill was discussed, voted upon and failed. The committee voted to endorse the bill as written.

A second bill also concerned non-participating manufacturers and the calculation of their market share for escrow payment purposes. Committee members noted that this and the previous bill were debated at length at the last meeting. The committee voted to endorse this bill as written.

The third and fourth bills were similar to House Bill 143 and Senate Bill 58, which were introduced last session by the co-chairs. The third bill, addressing internet and other delivery sales of tobacco, was discussed and committee members voted to endorse the bill without amendment. The fourth bill, addressing cigarette tax administration, stamping of tax-exempt cigarettes and licensing distributors and manufacturers, was discussed and the committee members voted to endorse the bill as written.

Senator Feldman made a motion to endorse legislation increasing the tobacco products tax as was recommended by the Blue Ribbon Tax Reform Commission. The vote was tied and the motion failed.

**Committee Business**

The committee adjourned at 12:45 p.m.

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## FY 2005 Funding Recommendations



**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)**  
**FISCAL YEAR 2004 APPROPRIATIONS FROM TOBACCO SETTLEMENT FUNDS**  
**AND FISCAL YEAR 2005 RECOMMENDATIONS**  
(thousands of dollars)

<b><u>Agency and Program</u></b>		<b>2004 General Fund Appropriation</b>	<b>2005 TSROC Recommendation</b>
	DOH Tobacco cessation and prevention programs	\$5,000.0	\$8,000.0
DOH	Diabetes prevention and control program	1,000.0	1,000.0
DOH	HIV/AIDS services	470.0	470.0
DOH	Smart Moves program (alliance of boys and girls clubs)	1,000.0 (1)	
DOH	Prostate cancer program	100.0 (2)	
UNM	Innovations in preventing and treating tobacco-related diseases		
	Genomics core facilities	162.5	162.5
	Epidemiology	374.8	374.8
	Enhanced tobacco-related research	180.0	180.0
	Clinical research and trials	329.1	329.1
	Biocomputing	453.6	453.6
	Subtotal, tobacco-related diseases	1,500.0	1,500.0
	Other programs		
	Area Health Education Center	50.0	50.0
	Center for telehealth (formerly telemedicine)	150.0	150.0
	Los Pasos program	50.0	50.0
	Pediatric oncology	400.0	400.0
	Poison & Information Center	450.0	450.0
	Specialty education in pediatrics	400.0	400.0
	Specialty education in trauma	400.0	400.0
	Subtotal, other programs	1,900.0	1,900.0
UNM	Contract with Lovelace Respiratory Research Institute in lung and tobacco-related diseases	1,000.0	1,000.0
HSD	Breast & cervical cancer treatment program	1,300.0	1,300.0
HSD	Medicaid support (residual of unappropriated revenues)	7,627.5	0.0
<b>Total Recurring Programs</b>		<b>\$20,897.5</b>	<b>\$15,170.0</b>

**Exhibit:**

Projected tobacco settlement revenue to the general fund, FY 04	\$35,700.0
Projected tobacco settlement revenue to the general fund, FY 05	\$35,200.0

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## Notes:

- (1) The TSROC did not recommend this appropriation in fiscal year 2004.
- (2) The TSROC recommended a \$100,000 appropriation from **non-recurring** revenues for an education and information program on prostate cancer. This was funded as a recurring program from the General Fund.

**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**  
**FISCAL YEAR 2005 RECOMMENDATIONS**

**1. CONTINUE AND INCREASE FUNDING FOR THE TOBACCO USE PREVENTION AND CONTROL PROGRAM (TUPAC), DEPARTMENT OF HEALTH (DOH)**

**Current Funding - \$5,000\***

**FY 2005 Recommended Funding - \$8,000**

The committee is recommending that we continue to build a comprehensive tobacco cessation and prevention program that will eventually reduce the number of tobacco users, thereby reducing tobacco-related disease and treatment, which presently costs \$48 to \$70 million in Medicaid expenditures alone. The Centers for Disease Control and Prevention (CDC) recommends a minimum of \$14 million on such a program to significantly reduce tobacco use.

TUPAC contracts with over 60 contractors across the state to implement the goals of the program. The increase in funds would allow, among other things, a 1-800-Help line for cessation services, an increase in targeted school districts and youth activities, and tobacco cessation coverage in health plans. Contractors under this program fall into six categories:

**Community Programs:**

Local community programs reduce tobacco use through changes in the social environment and through community partnerships. The programs combine prevention, education and cessation efforts to mobilize communities to combat tobacco use and exposure. In addition to community health planning, the programs recruit youth into tobacco use prevention coalitions, train youth as advocates for their peers, provide media literacy and merchant education, and counter tobacco marketing activities.

**Cessation Programs:**

These programs focus on increasing access and availability of stop-smoking counseling and treatment, from the simplest quit technique to the most intensive. They are based upon proven intervention models. The programs include cessation interventions in schools, communities and health facilities, education on how to deliver cessation services, training for people who will lead cessation groups and media messages on quitting.

**School-based Youth and Parent Programs:**

These funds are awarded to school districts or allied organizations that provide programs ranging from age-specific classroom curricula to teacher training, special

\* All dollar amounts are given in thousands.

school projects, media literacy training, peer education programs and cessation programs for staff, parents and students. The programs are intended to prevent youth initiation of tobacco use, educate youth about the dangers of tobacco use, teach life skills and refusal skills, and provide an opportunity for youth who already smoke or use spit tobacco to quit.

#### **Media Campaigns:**

These funds are awarded to provide public awareness and education campaigns that send and reinforce powerful tobacco-free messages to promote cessation of tobacco use, promote prevention and educate about risks associated with secondhand smoke. Activities include newspaper articles featuring youth tobacco prevention, anti-tobacco banners and billboards, media literacy training, counter advertising, TV, radio, billboard and print media, and a 1-800-4-CANCER help line.

#### **Partnerships with Disparate Populations:**

These funds are awarded to assist various communities that are disproportionately affected by tobacco use, including Native Americans, Hispanics, women, rural populations and low-income individuals. Partnerships with these groups are aimed at increasing prevention and reducing tobacco use. Activities include facilitating focus groups and organizing and implementing forums to educate and inform.

#### **Surveillance and Evaluation:**

These funds are used to monitor the behaviors, attitudes and outcomes related to tobacco use and to track the progress of program elements and performance indicators, including developing a common reporting format for all TUPAC programs, providing evaluation training, conducting youth and adult tobacco surveys, and identifying, collecting and analyzing evaluation information and data.

### **2. CONTINUE FUNDING THE DIABETES PREVENTION AND CONTROL PROGRAM, DOH**

**Current Funding - \$1,000**

**FY 2005 Recommended Funding - \$1,000**

These funds provide public education and media on diabetes and support for rural clinics with supplies, equipment and lab tests. They would also provide diabetes education on children's health as well as activity and nutrition programs in elementary schools.

### **3. CONTINUE FUNDING HIV/AIDS SERVICES, DOH**

**Current Funding - \$470**

#### **FY 2005 Recommended Funding - \$470**

These funds provide chronic care AIDS treatment services to help people with AIDS lead longer, fuller and more productive lives. The care includes practical, psycho-social and clinical services. The funds are also used to contract with community-based organizations to implement statewide HIV prevention and education programs.

#### **4. CONTINUE FUNDING RESEARCH PROGRAMS, UNIVERSITY OF NEW MEXICO (UNM) HEALTH SCIENCES CENTER (HSC)**

**Current Funding - \$1,500**

**FY 2005 Recommended Funding - \$1,500**

These funds would be used for existing health care research programs by UNM HSC, to translate research findings into effective clinical care programs, disseminate scholarly work, and recruit and hire scientists and support personnel. The research funds are spent as follows:

Genomics core facilities	\$ 162.5
Epidemiology	374.8
Enhanced tobacco-related research	180.0
Clinical research and trials	329.1
Biocomputing	<u>453.6</u>
	\$ 1,500.0

#### **5. CONTINUE FUNDING OTHER PROGRAMS ADMINISTERED BY UNM**

**Total Current Funding - \$1,900**

**Total FY 2004 Recommended Funding - \$1,900**

**Area Health Education Centers                      \$50**

The purpose of these funds is to increase the number of health care professionals practicing in rural and under served areas and to expand clinical training in those areas for medical, nursing, public health, pharmacy, physician assistants and allied health students, as well as for primary care residents. Additionally, the funds are intended to increase the health profession applicant pool from under-represented ethnic minorities and from shortage areas. Finally, the funds would support and provide continuing education programs in order to retain health professionals in the under served areas.

**Center for Telehealth                                      \$150**

The purpose of these funds is to improve the quality of and access to health care systems in rural New Mexico by using advanced technology to extend the resources of

the UNM HSC to remote areas of the state. The funds are used to increase the number of clinical services, educational programs and administrative activities delivered to remote sites. The center collaborates with the federal government and the University of Hawaii.

**Los Pasos Program** **\$50**

The purpose of these funds is to provide comprehensive health services to families and to children up to age three who have been exposed in utero to alcohol and other drugs. The goals include the prevention of negative consequences of parental use of alcohol, tobacco and other drugs, as well as training support and technical assistance to agencies and community programs in northern and central New Mexico.

**Pediatric Oncology** **\$400**

The purpose of these funds is to provide statewide quality care, treatment, monitoring and support for children and families facing childhood cancer. The program has initiated a three-year pediatric oncology curriculum for residents and advances the treatment of childhood cancer through the pursuit of clinical and basic research at the local and national level.

**Poison and Information Center** **\$450**

The purpose of these funds is to reduce morbidity and mortality associated with poisoning and to encourage proper use of medications. The center provides a statewide poison prevention program, educates the public, offers first-aid information, distributes materials and provides treatment information to health professionals. The funds support 24-hour statewide expert assistance for poisoning emergencies. The center has an active research program, provides education and training to health care professionals and collaborates with local, state and federal agencies.

**Specialty Education in Pediatrics** **\$400**

The purpose of these funds is to pay salaries of physicians serving on the pediatrics faculty at the UNM School of Medicine. The faculty treat children as well as educate medical students, residents and community providers. They conduct research to advance pediatric health care across the state. The funds will also be used for related materials, services and travel to assist the educational program.

**Specialty Education in Trauma** **\$400**

The purpose of these funds is to pay salaries of physicians serving on the UNM School of Medicine faculty. The faculty educate medical students in trauma, critical care and emergency care and staff the Level I Trauma Center at the UNM Hospital emergency room.

**6. LOVELACE RESPIRATORY RESEARCH INSTITUTE, EMPHYSEMA**

## **AND LUNG CANCER RESEARCH, UNM**

**Current Funding - \$1,000**

**FY 2005 Recommended Funding - \$1,000**

These funds would continue the contract with Lovelace Respiratory Research Institute (LRRI) for its research in emphysema and lung cancer detection and treatment. LRRI is "leading the world" in lung cancer research. The research also includes a cohort study on women at risk for lung cancer and emphysema.

## **7. BREAST AND CERVICAL CANCER TREATMENT PROGRAM, HUMAN SERVICES DEPARTMENT**

**Current Funding - \$1,300**

**FY 2005 Recommended Funding \$1,300**

The purpose of these funds is to provide treatment for women with breast or cervical cancer who are eligible for Medicaid. New Mexico receives an enhanced federal match for this program. Federal funds pay 82 percent and state funds 18 percent of the total cost. Since the program began in July, 2002, the number of participants continues to grow. One hundred and eighty-eight (188) women have been screened for breast and cervical cancer. The program has been successful in early detection of cancer and pre-cancerous conditions.

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## Proposed Legislation



HOUSE BILL

12/22/03

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO; AMENDING THE ESCROW FUND ACT TO ALLOW THE  
ATTORNEY GENERAL TO REQUIRE QUARTERLY DEPOSITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-4-21 NMSA 1978 (being Laws 2003,  
Chapter 114, Section 8) is amended to read:

"6-4-21. REPORTING OF INFORMATION-- ESCROW INSTALLMENTS. --

A. A distributor shall submit to the department by  
the twenty-fifth day of each month a list by brand family of  
the total number of cigarettes, or equivalent stick count in  
the case of roll-your-own, for which the distributor affixed  
tax stamps or otherwise paid the tax due during the previous  
calendar month, and any other information that the department  
or attorney general may require. A distributor shall maintain  
and make available to the department and attorney general all

1 invoices and documentation of sales of all nonparticipating  
2 manufacturer cigarettes and any other information relied upon  
3 in reporting to the department and attorney general for a  
4 period of five years.

5 B. The department and attorney general shall share  
6 information received pursuant to the Tobacco Escrow Fund Act,  
7 and may share information with other federal, state or local  
8 agencies for purposes of enforcement of that act, enforcement  
9 of Section 6-4-13 NMSA 1978 or enforcement of corresponding  
10 laws of other states.

11 C. The attorney general may require proof from a  
12 nonparticipating manufacturer that it has established a  
13 qualified escrow fund with verification of the amount of money  
14 in the fund exclusive of interest, including the balance, dates  
15 and amounts of deposits and dates and amounts of withdrawals.

16 D. The attorney general and the department may  
17 require a distributor or tobacco product manufacturer to submit  
18 additional information as necessary to determine compliance  
19 with the Tobacco Escrow Fund Act, including samples of the  
20 packaging or labeling of each brand family.

21 E. The attorney general may [~~promulgate rules~~  
22 ~~requiring~~] require a nonparticipating manufacturer to make  
23 escrow fund deposits [~~annually~~] quarterly and may require  
24 information sufficient to determine the adequacy of the amount  
25 of the [~~annual~~] quarterly deposit.

1           F. The attorney general or the department may seek  
2 an injunction to compel compliance with this section. In any  
3 action brought pursuant to this subsection, the state shall be  
4 entitled to recover the costs of investigation, costs of the  
5 action and reasonable attorney fees. "

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HOUSE BILL

12/22/03

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO; CLARIFYING THE STATUTORY RELEASE FOR  
NONPARTICIPATING MANUFACTURERS; AMENDING AND ENACTING SECTIONS  
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-4-13 NMSA 1978 (being Laws 1999,  
Chapter 208, Section 2) is amended to read:

"6-4-13. REQUIREMENTS. --

A. Any tobacco product manufacturer selling  
cigarettes to consumers within the state (whether directly or  
through a distributor, retailer or similar intermediary or  
intermediaries) after the date of enactment of this act shall  
do one of the following:

(1) become a participating manufacturer (as  
that term is defined in section II(jj) of the master settlement

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1 agreement) and generally perform its financial obligations  
2 under the master settlement agreement; or

3 (2) place into a qualified escrow fund by  
4 April 15 of the year following the year in question the  
5 following amounts (as such amounts are adjusted for inflation):

6 (a) 1999: \$.0094241 per unit sold after  
7 the date of enactment of this act;

8 (b) 2000: \$.0104712 per unit sold;

9 (c) for each of 2001 and 2002:  
10 \$.0136125 per unit sold;

11 (d) for each of 2003 through 2006:  
12 \$.0167539 per unit sold; and

13 (e) for each of 2007 and each year  
14 thereafter: \$.0188482 per unit sold.

15 B. A tobacco product manufacturer that places funds  
16 into escrow pursuant to Paragraph (2) of Subsection A of this  
17 section shall receive the interest or other appreciation on  
18 such funds as earned. Such funds themselves shall be released  
19 from escrow only under the following circumstances:

20 (1) to pay a judgment or settlement on any  
21 released claim brought against such tobacco product  
22 manufacturer by the state or any releasing party located or  
23 residing in the state. Funds shall be released from escrow  
24 under this paragraph:

25 (a) in the order in which they were

1 placed into escrow; and

2 (b) only to the extent and at the time  
3 necessary to make payments required under such judgment or  
4 settlement;

5 (2) to the extent that a tobacco product  
6 manufacturer establishes that the amount it was required to  
7 place into escrow on account of units sold in the state in a  
8 particular year was greater than ~~[the state's allocable share~~  
9 ~~of the total payments that such manufacturer would have been~~  
10 ~~required to make in that year under the master settlement~~  
11 ~~agreement (as determined pursuant to section IX(i)(2) of the~~  
12 ~~master settlement agreement, and before any of the adjustments~~  
13 ~~or offsets described in section IX(i)(3) of that agreement~~  
14 ~~other than the inflation adjustment)]~~ the master settlement  
15 agreement payments, as determined pursuant to section IX(i) of  
16 that agreement, including after final determination of all  
17 adjustments, that such manufacturer would have been required to  
18 make an account of such units sold had it been a participating  
19 manufacturer, the excess shall be released from escrow and  
20 revert back to such tobacco product manufacturer; or

21 (3) to the extent not released from escrow  
22 under Paragraphs (1) or (2) of this subsection, funds shall be  
23 released from escrow and revert back to such tobacco product  
24 manufacturer twenty-five years after the date on which they  
25 were placed into escrow.

1 C. Each tobacco product manufacturer that elects to  
2 place funds into escrow pursuant to Paragraph (2) of Subsection  
3 A of this section shall annually certify to the attorney  
4 general that it is in compliance with Paragraph (2) of  
5 Subsection A of this section and Subsection B of this  
6 section. The attorney general may bring a civil action on  
7 behalf of the state against any tobacco product manufacturer  
8 that fails to place into escrow the funds required under  
9 Paragraph (2) of Subsection A of this section and Subsection B  
10 of this section. Any tobacco product manufacturer that fails  
11 in any year to place into escrow the funds required under  
12 Paragraph (2) of Subsection A of this section and Subsection B  
13 of this section shall:

14 (1) be required within fifteen days to place  
15 such funds into escrow as shall bring it into compliance with  
16 Paragraph (2) of Subsection A of this section and Subsection B  
17 of this section. The court, upon a finding of a violation of  
18 Paragraph (2) of Subsection A of this section or Subsection B  
19 of this section, may impose a civil penalty to be paid to the  
20 state general fund in an amount not to exceed five percent of  
21 the amount improperly withheld from escrow per day of the  
22 violation and in a total amount not to exceed one hundred  
23 percent of the original amount improperly withheld from escrow;

24 (2) in the case of a knowing violation, be  
25 required within fifteen days to place such funds into escrow as

1 shall bring it into compliance with Paragraph (2) of Subsection  
2 A of this section and Subsection B of this section. The court,  
3 upon a finding of a knowing violation of Paragraph (2) of  
4 Subsection A of this section or Subsection B of this section,  
5 may impose a civil penalty to be paid to the state general fund  
6 in an amount not to exceed fifteen percent of the amount  
7 improperly withheld from escrow per day of the violation and in  
8 a total amount not to exceed three hundred percent of the  
9 original amount improperly withheld from escrow; and

10 (3) in the case of a second knowing violation,  
11 be prohibited from selling cigarettes to consumers within the  
12 state (whether directly or through a distributor, retailer or  
13 similar intermediary) for a period not to exceed two years.

14 Each failure to make an annual deposit required under  
15 Paragraph (2) of Subsection A of this section shall constitute  
16 a separate violation. "

17 Section 2. A new section, Section 6-4-13.1 NMSA 1978, is  
18 enacted to read:

19 "6-4-13.1. [NEW MATERIAL] SEVERABILITY. --If the 2004  
20 amendment to Paragraph (2) of Subsection B of Section 6-4-13  
21 NMSA 1978 is held by a court of competent jurisdiction to be  
22 unconstitutional, then Paragraph (2) of Subsection B of Section  
23 6-4-13 NMSA 1978 shall be deemed to be repealed in its  
24 entirety. If Subsection B of Section 6-4-13 NMSA 1978 is  
25 thereafter held by a court of competent jurisdiction to be



1 unconstitutional, then the 2004 amendment shall be deemed  
2 repealed and Paragraph (2) of Subsection B of Section 6-4-13  
3 NMSA 1978 shall be restored as if no such amendment had been  
4 made. Neither a holding of unconstitutionality nor the repeal  
5 of Paragraph (2) of Subsection B of Section 6-4-13 NMSA 1978  
6 shall affect, impair or invalidate any other portion of  
7 Sections 6-4-12 and 6-4-13 NMSA 1978, or the application of  
8 such sections to any other person or circumstance, and such  
9 remaining portions of Sections 6-4-12 and 6-4-13 NMSA 1978  
10 shall at all times continue in full force and effect."

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## HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO; ENACTING THE TOBACCO DELIVERY SALES ACT;  
PROVIDING FOR AGE VERIFICATION, TAX COMPLIANCE, REPORTING AND  
SHIPPING REQUIREMENTS; PROVIDING FOR REGISTRATION OF SELLERS;  
IMPOSING PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the  
"Tobacco Delivery Sales Act".

Section 2. DEFINITIONS. -- As used in the Tobacco Delivery  
Sales Act:

A. "consumer" means an individual who purchases a  
tobacco product by means of a delivery sale;

B. "delivery sale" means a sale of a tobacco  
product to a consumer in New Mexico when the consumer submits  
the order for the sale by written, telephonic or electronic

1 means or when the tobacco product is delivered by mail or other  
2 delivery service;

3 C. "delivery service" means a person or entity  
4 engaged in the delivery of letters, packages or other  
5 containers or that otherwise delivers a tobacco product to a  
6 consumer in New Mexico;

7 D. "department" means the taxation and revenue  
8 department, the secretary of taxation and revenue or an  
9 employee of the department exercising authority lawfully  
10 delegated to that employee;

11 E. "seller" means a person or an agent or employee  
12 of a person who sells or transfers a tobacco product by means  
13 of a delivery sale; and

14 F. "tobacco product" means tobacco or any  
15 consumable product that contains tobacco, including cigarettes,  
16 cigars, chewing tobacco, smokeless tobacco, bidis and kreteks.

17 Section 3. REQUIREMENTS. --

18 A. A seller shall comply with all the requirements  
19 set forth in the Tobacco Delivery Sales Act, the Cigarette Tax  
20 Act, the Tobacco Products Act and all other laws applicable to  
21 sales of tobacco products that occur entirely within New  
22 Mexico, including laws imposing excise tax, gross receipts tax,  
23 licensing, stamping, escrow payments and other payment  
24 obligations.

25 B. A delivery sale of a tobacco product to an

1 individual in New Mexico shall be deemed a sale to a consumer  
2 unless the individual is a licensed distributor or a retailer.

3 Section 4. AGE VERIFICATION. --

4 A. A seller shall not accept an order for or make a  
5 delivery sale of a tobacco product to an individual who is  
6 under eighteen years of age.

7 B. Before mailing or shipping a tobacco product in  
8 connection with a delivery sale, a seller shall obtain reliable  
9 confirmation that the prospective consumer is at least eighteen  
10 years old. The seller shall:

11 (1) obtain identification in the form of:

12 (a) government-issued identification, or  
13 a copy of it, bearing a photograph of the consumer; or

14 (b) information from government-issued  
15 photo identification that includes the consumer's full name,  
16 address, date of birth and the type and number of the  
17 government-issued identification;

18 (2) obtain a statement signed by the  
19 prospective consumer in writing or electronically that:

20 (a) certifies the prospective consumer's  
21 name, address and date of birth;

22 (b) confirms that the prospective  
23 consumer understands that: 1) signing another person's name is  
24 illegal; 2) falsely certifying to be another person is illegal;  
25 3) the sale or procurement of a tobacco product to an

1 individual under the age of eighteen is illegal; and 4) the  
2 purchase of a tobacco product by an individual under the age of  
3 eighteen is illegal; and

4 (c) confirms that the prospective  
5 consumer understands that providing false information may  
6 subject the consumer to monetary fines or imprisonment, or  
7 both;

8 (3) verify the information provided pursuant  
9 to Paragraph (1) of this subsection against a commercially  
10 available database consisting of age and identity information  
11 obtained solely from government records; and

12 (4) receive payment for the delivery sale by a  
13 credit or debit card issued in the consumer's name.

14 C. A seller shall not use any of the information  
15 obtained from a prospective or actual consumer, including any  
16 information that may be used to contact the consumer, for any  
17 purpose other than to complete the delivery sale and to comply  
18 with the Tobacco Delivery Sales Act and other applicable state  
19 and federal laws relating to the delivery sale unless the  
20 consumer affirmatively provides authorization for a specified  
21 use and the seller regularly provides the consumer with clear  
22 and conspicuous opportunities to revoke the authorization.

23 Section 5. SHIPPING REQUIREMENTS. --

24 A. A seller shall:

25 (1) include as part of the shipping documents

1 a clear and conspicuous statement as follows: "TOBACCO  
2 PRODUCT: NEW MEXICO LAW PROHIBITS SHIPPING TO INDIVIDUALS  
3 UNDER THE AGE OF 18 AND REQUIRES PAYMENT OF ALL APPLICABLE  
4 TAXES";

5 (2) use a method of shipping that obligates  
6 the delivery service to require:

7 (a) that only the consumer who placed  
8 the delivery sale order, or an adult designated by the consumer  
9 who resides at the shipping address, may sign for and accept  
10 delivery of the shipping container; and

11 (b) proof, in the form of government-  
12 issued identification bearing a photograph of the individual  
13 who signs for and accepts delivery, that the individual is at  
14 least eighteen years old; and

15 (3) provide to the delivery service evidence  
16 of full compliance with Section 8 of the Tobacco Delivery Sales  
17 Act and of the seller's registration with the department.

18 B. A delivery service shall deliver a tobacco  
19 product only in accordance with the provisions set forth in  
20 Subsection A of this section.

21 C. A delivery service shall not deliver a tobacco  
22 product on behalf of a seller that does not comply with the  
23 provisions set forth in Subsection A of this section.

24 D. A delivery service that chooses not to deliver a  
25 tobacco product shall not be subject to any liability or

1 penalty for so choosing.

2 Section 6. MAXIMUM DELIVERY AMOUNTS. --

3 A. A tobacco product delivered in a delivery sale  
4 cannot exceed ten cartons of cigarettes, two hundred cigars,  
5 one hundred ounces of smokeless tobacco or pipe tobacco or such  
6 comparable amounts of other tobacco products as may be  
7 determined by the department.

8 B. A seller shall not make more than one delivery  
9 sale to a specific consumer in a seven-day period.

10 Section 7. REGISTRATION--RECORDS--REPORTS--  
11 CONFIDENTIALITY. --

12 A. A seller shall register with the department and  
13 file a statement setting forth the seller's:

- 14 (1) name and trade name;  
15 (2) addresses and phone numbers of its  
16 principal place of business and any other place of business;  
17 (3) email address;  
18 (4) web site addresses that relate to delivery  
19 sales; and  
20 (5) other information as the department may  
21 require.

22 B. A seller shall file with the department on a  
23 monthly basis a report providing information on delivery sales  
24 made in the previous calendar month. The report shall include  
25 for each delivery sale:

1 (1) the name and address of the consumer to  
2 whom the sale was made;

3 (2) the type, brand and quantity of each  
4 tobacco product sold;

5 (3) the date of the sale; and

6 (4) the name, address and telephone number of  
7 the delivery service used.

8 C. The department shall prescribe the manner and  
9 form of the report required pursuant to Subsection B of this  
10 section and may require invoices and additional information to  
11 be submitted.

12 D. A seller shall retain all records required  
13 pursuant to Subsections B and C of this section for a period of  
14 three years from the end of the year in which the transaction  
15 occurred unless otherwise required by law to retain them for a  
16 longer period of time.

17 E. The department shall maintain the  
18 confidentiality of the names and addresses of individuals  
19 identified pursuant to the provisions of Subsection B of this  
20 section and shall not use this information for any purpose  
21 other than the enforcement of the Tobacco Delivery Sales Act.

22 F. The department shall make public the information  
23 provided pursuant to Subsection A of this section, including  
24 posting on a public web site a current list of those registered  
25 sellers that are in compliance with state laws.



1           Section 8.   COLLECTION OF TAXES. --

2           A.   A seller shall remit to the department on a  
3 monthly basis all excise and other taxes applicable to its  
4 delivery sales in the manner and on the form prescribed by the  
5 department.

6           B.   A seller shall not make a delivery sale of  
7 cigarettes unless the cigarette packages are stamped in  
8 accordance with the provisions of the Cigarette Tax Act.   A  
9 cigarette package that is stamped pursuant to the provisions of  
10 the Cigarette Tax Act shall be sufficient evidence to a  
11 delivery service that excise taxes have been paid on that  
12 cigarette package.

13           C.   The department may impose additional  
14 requirements on sellers to ensure compliance with applicable  
15 tax laws.

16           Section 9.   PENALTIES. --

17           A.   A first violation by a seller of a provision of  
18 the Tobacco Delivery Sales Act shall be punishable by a fine of  
19 one thousand dollars (\$1,000) or five times the retail value of  
20 the tobacco products involved, whichever is greater.

21           B.   A second or subsequent violation by a seller of  
22 a provision of the Tobacco Delivery Sales Act is a misdemeanor  
23 punishable by a fine of five thousand dollars (\$5,000) or ten  
24 times the retail value of the tobacco products involved,  
25 whichever is greater, or imprisonment for a definite term in

1 accordance with the provisions of Section 31-19-1 NMSA 1978, or  
2 both. Upon conviction, the department may prohibit the seller  
3 from selling tobacco products in New Mexico for a period up to  
4 five years.

5 C. A seller who fails to pay a tax required in  
6 connection with a delivery sale shall pay, in addition to any  
7 other penalty, a penalty of five hundred percent of the tax due  
8 but unpaid.

9 D. A delivery service that knowingly violates a  
10 provision of the Tobacco Delivery Sales Act shall, for a first  
11 violation, be fined one thousand dollars (\$1,000) or five times  
12 the retail value of the tobacco products involved, whichever is  
13 greater. A second or subsequent violation by a delivery  
14 service shall be punishable by a fine of five thousand dollars  
15 (\$5,000) or ten times the retail value of the tobacco products  
16 involved, whichever is greater. Upon a second or subsequent  
17 violation, the department may prohibit the delivery service  
18 from delivering tobacco products for a period up to five years.

19 E. A person who provides false information to  
20 obtain a tobacco product by means of a delivery sale is guilty  
21 of a petty misdemeanor and shall be sentenced in accordance  
22 with the provisions of Section 31-19-1 NMSA 1978.

23 F. A tobacco product sold or attempted to be sold  
24 in a delivery sale in violation of the Tobacco Delivery Sales  
25 Act shall be forfeited to the department pursuant to the

1 Forfeiture Act.

2 Section 10. ENFORCEMENT. --

3 A. The department, the attorney general, a district  
4 attorney or a person holding a permit under 26 U. S. C. 5713 may  
5 bring an action to enforce the provisions of the Tobacco  
6 Delivery Sales Act or to prevent or restrain violations of that  
7 act.

8 B. The department, a district attorney or a person  
9 bringing an action under this section shall provide the  
10 attorney general at least fifteen days' notice prior to  
11 bringing the action.

12 C. The attorney general may join in any action  
13 brought pursuant to the provisions of the Tobacco Delivery  
14 Sales Act.

15 Section 11. APPROPRIATION. -- One hundred thousand dollars  
16 (\$100,000) is appropriated from the general fund to the  
17 taxation and revenue department for expenditure in fiscal year  
18 2005 to implement the provisions of this act. Any unexpended  
19 or unencumbered balance remaining at the end of fiscal year  
20 2005 shall revert to the general fund.

## HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

## DISCUSSION DRAFT

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

## AN ACT

RELATING TO TOBACCO; ENHANCING CIGARETTE STAMP PROCEDURES;  
 PROVIDING FOR TAX-EXEMPT STAMPS; EXPANDING REPORTING AND  
 LICENSING REQUIREMENTS; PROVIDING CIVIL AND CRIMINAL PENALTIES;  
 AMENDING, REPEALING AND ENACTING SECTIONS OF THE CIGARETTE TAX  
 ACT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-12-2 NMSA 1978 (being Laws 1971,  
 Chapter 77, Section 2, as amended) is amended to read:

"7-12-2. DEFINITIONS. -- As used in the Cigarette Tax Act:

A. "cigarette" means ~~[any]~~ a roll of tobacco ~~[or~~  
~~any substitute therefor]~~ wrapped in paper or ~~[any]~~ in a  
 substance ~~[other than]~~ not containing tobacco, and "cigarette"  
includes bidis and kreteks;

~~[B. "person" means any individual, estate, trust,~~

1 ~~receiver, cooperative association, club, corporation, company,~~  
2 ~~firm, partnership, joint venture, syndicate or other entity;~~

3 ~~C.]~~ B. "department" means the taxation and revenue  
4 department, the secretary of taxation and revenue or any  
5 employee of the department exercising authority lawfully  
6 delegated to that employee; ~~[by the secretary~~

7 ~~D. "secretary" means the secretary of taxation and~~  
8 ~~revenue;]~~

9 C. "distributor" means a person, other than a  
10 retailer, that sells or distributes cigarettes in New Mexico.

11 "Distributor" does not include:

12 (1) a cigarette manufacturer, export warehouse  
13 proprietor or an importer with a valid permit pursuant to 26  
14 U.S.C. 5713 if such a person sells cigarettes in New Mexico  
15 only to distributors that hold valid licenses under the laws of  
16 a state or sells to an export warehouse proprietor or to  
17 another manufacturer; or

18 (2) a common or contract carrier transporting  
19 cigarettes under a bill of lading or freight bill, or a person  
20 who ships cigarettes through the state by a common or contract  
21 carrier under a bill of lading or freight bill;

22 D. "license" means a license granted pursuant to  
23 the Cigarette Tax Act that authorizes the holder to conduct  
24 business as a manufacturer or distributor of cigarettes;

25 E. "manufacturer" means a person that manufactures,

1 fabricates, assembles, processes or labels a cigarette or that  
2 imports from outside the United States, directly or indirectly,  
3 a finished cigarette for sale or distribution in the United  
4 States;

5 F. "master settlement agreement" means the  
6 settlement agreement and related documents entered into on  
7 November 23, 1998 by the state and leading United States  
8 tobacco product manufacturers;

9 G. "package" means the individual pack, box or  
10 other container that contains cigarettes, but "package" does  
11 not include a container that itself contains other containers,  
12 such as a carton of cigarettes;

13 H. "retailer" means a person, whether located  
14 within or outside New Mexico, that sells or distributes  
15 cigarettes to a consumer in New Mexico;

16 ~~[E.]~~ I. "stamp" means ~~[any authorized label which~~  
17 ~~is issued to cover the tax in multiples of five cigarettes]~~ an  
18 adhesive label issued and authorized by the department to be  
19 affixed to cigarette packages for excise tax purposes and upon  
20 which is printed a serial number and the words "State of New  
21 Mexico" and "tobacco tax" [and which is coated with an adhesive  
22 ~~to affix the stamp to a package so that the stamp, once~~  
23 ~~affixed, cannot be removed without destroying it;~~

24 ~~F. "stamped" means a package or container of~~  
25 ~~cigarettes to which a cigarette tax stamp has been affixed as~~

1 ~~provided in the Cigarette Tax Act; and~~

2 ~~G. "unstamped" means a package or container of~~  
3 ~~cigarettes to which the cigarette tax stamp provided for in the~~  
4 ~~Cigarette Tax Act has not been affixed];~~

5 J. "tax stamp" means a stamp that has a specific  
6 excise tax value pursuant to Section 7-12-3 NMSA 1978; and

7 K. "tax-exempt stamp" means a stamp that indicates  
8 a tax-exempt status pursuant to Section 7-12-4 NMSA 1978. "

9 Section 2. Section 7-12-3.1 NMSA 1978 (being Laws 1986,  
10 Chapter 13, Section 3, as amended) is amended to read:

11 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--  
12 DATE PAYMENT OF TAX DUE. --

13 A. A cigarette inventory tax is imposed, measured  
14 by the quantity of cigarette stamps, whether or not affixed to  
15 packages of cigarettes, in the possession of a person who is  
16 required by Subsection [E] A of Section 7-12-5 NMSA 1978 to  
17 affix stamps on the date on which an increase in the excise tax  
18 imposed by Section 7-12-3 NMSA 1978 is effective. The taxable  
19 event is the existence of an inventory of cigarette stamps,  
20 whether or not affixed to packages of cigarettes, in the  
21 possession of a person who is required by Subsection [E] A of  
22 Section 7-12-5 NMSA 1978 to affix stamps on the date on which  
23 an increase in the excise tax imposed by Section 7-12-3 NMSA  
24 1978 is effective. The rate of the cigarette inventory tax to  
25 apply to cigarette stamps held in inventory shall be the amount

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1 of the increase in the cigarette tax imposed by Section 7-12-3  
2 NMSA 1978.

3 B. The cigarette inventory tax is to be paid to the  
4 department on or before the twenty-fifth day of the month  
5 following the month in which the taxable event occurs. "

6 Section 3. Section 7-12-3.2 NMSA 1978 (being Laws 1986,  
7 Chapter 13, Section 4) is amended to read:

8 "7-12-3.2. CIGARETTE INVENTORIES. --

9 A. On any date on which the excise tax imposed by  
10 Section 7-12-3 NMSA 1978 is increased, each person who is  
11 required by Subsection [E] A of Section 7-12-5 NMSA 1978 to  
12 affix stamps shall take inventory of cigarette stamps on hand,  
13 including stamps affixed to packages of cigarettes.

14 B. Each person required to take an inventory by  
15 Subsection A of this section shall report the total number of  
16 cigarette stamps in inventory on the date on which the tax  
17 imposed by Section 7-12-3 NMSA 1978 changes and pay any tax due  
18 imposed by Section 7-12-3.1 NMSA 1978. "

19 Section 4. Section 7-12-5 NMSA 1978 (being Laws 1971,  
20 Chapter 77, Section 5, as amended) is amended to read:

21 "7-12-5. AFFIXING STAMPS. --

22 A. Except as provided in Section 7-12-6 NMSA 1978,  
23 all cigarettes [~~the sale, gift or consumption of which is~~  
24 ~~subject to the cigarette tax~~] shall be placed in packages [~~or~~  
25 ~~containers~~] to which a stamp [~~may~~] shall be affixed. Only a



1 distributor with a valid license issued pursuant to the  
2 Cigarette Tax Act may purchase or obtain stamps. Stamps shall  
3 be applied by the licensed distributor to each package of  
4 cigarettes to be sold or distributed in New Mexico within  
5 seventy-two hours of receipt of those packages. A distributor  
6 shall not sell or provide stamps to another distributor or  
7 person.

8 B. A distributor shall apply stamps only to  
9 cigarette packages that it has received directly from a  
10 manufacturer or importer of cigarettes that possesses a valid  
11 and current permit pursuant to 26 U. S. C. 5713.

12 ~~[B.] C. Packages [or containers to which a stamp is~~  
13 ~~required to be affixed and which] that~~ contain cigarettes that  
14 are not in multiples of five cigarettes shall have affixed a  
15 stamp of the next higher multiple of five cigarettes.

16 ~~[C.] D. Unless the requirements of this section are~~  
17 ~~waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall~~  
18 ~~be affixed to each package [or container of cigarettes, the~~  
19 ~~sale, gift or consumption of which is subject to the cigarette~~  
20 ~~tax. The stamp shall be affixed by any person who sells in New~~  
21 ~~Mexico cigarettes manufactured by that person or who receives~~  
22 ~~on consignment or buys unstamped cigarettes for sale, gift or~~  
23 ~~consumption in New Mexico] of cigarettes subject to the~~  
24 cigarette tax pursuant to Section 7-12-3 NMSA 1978, and a tax-  
25 exempt stamp shall be affixed to each package of cigarettes not

1 subject to the cigarette tax pursuant to Section 7-12-4 NMSA  
2 1978.

3 [D-] E. Stamps shall be affixed inside the  
4 boundaries of New Mexico, unless the department has granted a  
5 license allowing a person to affix stamps outside New Mexico. "

6 Section 5. Section 7-12-6 NMSA 1978 (being Laws 1971,  
7 Chapter 77, Section 6, as amended) is amended to read:

8 "7-12-6. WAIVER OF REQUIREMENT THAT STAMPS BE  
9 AFFIXED. --The requirement imposed in Section 7-12-5 NMSA 1978  
10 that stamps be affixed to packages [or containers] of  
11 cigarettes is waived if

12 [~~A. the cigarettes are sold on railroad passenger~~  
13 ~~trains in New Mexico. When unstamped cigarettes are sold on~~  
14 ~~railroad passenger trains in New Mexico, the seller shall remit~~  
15 ~~to the department the tax imposed in Section 7-12-3 NMSA 1978~~  
16 ~~on or before the twenty-fifth day of the month following the~~  
17 ~~month in which sales of unstamped cigarettes are made on~~  
18 ~~railroad passenger trains in New Mexico; or~~

19 B. ~~the cigarettes are distributed by a cigarette~~  
20 ~~manufacturer to consumers within the state of New Mexico as~~  
21 ~~free samples. When unstamped cigarettes are distributed by a~~  
22 ~~cigarette manufacturer in New Mexico as free samples, the~~  
23 ~~manufacturer shall remit to the department the tax imposed in~~  
24 ~~Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of~~  
25 ~~the month following the month in which distributions of~~

1 ~~unstamped cigarettes are made~~ the cigarettes are distributed  
2 by a manufacturer pursuant to federal regulations and are  
3 exempt from tax pursuant to 26 U.S.C. 5704. "

4 Section 6. Section 7-12-7 NMSA 1978 (being Laws 1971,  
5 Chapter 77, Section 7, as amended) is amended to read:

6 "7-12-7. SALE OF STAMPS-- ~~[PRICES]~~ NUMBERING-- DISCOUNTS. --

7 A. The department shall sell stamps ~~[to any person~~  
8 ~~who sells in New Mexico cigarettes manufactured by that person~~  
9 ~~and to any person who receives on consignment or buys unstamped~~  
10 ~~cigarettes for sale, gift or consumption in New Mexico,~~  
11 ~~provided such persons are registered with the department under~~  
12 ~~the provisions of Section 7-1-12 NMSA 1978]~~ only to  
13 distributors licensed pursuant to the Cigarette Tax Act.

14 B. Each roll or group of sheets of stamps shall  
15 have a separate serial number, which shall be legible at the  
16 point of sale. The department shall keep records of which  
17 distributor purchases each roll or group of sheets. Stamps  
18 bearing the same serial number shall not be sold to more than  
19 one distributor.

20 C. Tax stamps shall be sold at their face value  
21 with the following discounts:

22 (1) ~~[four]~~ nine-tenths percent less than the  
23 face value of the first thirty thousand dollars (\$30,000) of  
24 stamps purchased in one calendar month;

25 (2) ~~[three]~~ seven-tenths percent less than the

1 face value of the second thirty thousand dollars (\$30,000) of  
2 stamps purchased in one calendar month; and

3 (3) [~~two~~] five-tenths percent less than the  
4 face value of all stamps purchased in excess of sixty thousand  
5 dollars (\$60,000) in one calendar month.

6 [~~B.~~] D. If the face value of tax stamps sold in a  
7 single sale is less than one thousand dollars (\$1,000), the  
8 discount provided for in this section shall not be allowed.

9 [~~C.~~] E. Payment for tax stamps shall be made on or  
10 before the twenty-fifth day of the month following the month in  
11 which the sale of stamps by the department is made.

12 F. Tax-exempt stamps shall be provided only to  
13 licensed distributors and shall be free of charge; provided  
14 that the distributor is in full compliance with the reporting  
15 requirements of the Cigarette Tax Act and rules promulgated  
16 pursuant to that act."

17 Section 7. Section 7-12-9 NMSA 1978 (being Laws 1971,  
18 Chapter 77, Section 9, as amended) is amended to read:

19 "7-12-9. LICENSE NECESSARY TO ENGAGE IN BUSINESS OF  
20 SELLING CIGARETTES IN NEW MEXICO. -- [~~Each~~]

21 A. A person shall not engage in business as a  
22 manufacturer or distributor without first obtaining a license  
23 from the department.

24 B. A manufacturer or distributor shall sell or  
25 distribute cigarettes within New Mexico only to a distributor

1 with a valid current license or to a retailer. A distributor  
2 or retailer shall obtain cigarettes within New Mexico only from  
3 a manufacturer or distributor with a valid current license.

4 C. The department shall, by rule, specify the  
5 length of time for which a license remains in effect, except  
6 that a license issued pursuant to this section shall not remain  
7 in effect for longer than two years.

8 D. An application for a license shall be submitted  
9 on a form established by the department and shall provide:

10 (1) the name and address of the applicant and,  
11 if the applicant is a firm, partnership or association, the  
12 name and address of each of its members and, if the applicant  
13 is a corporation, the name and address of each of its officers;

14 (2) the address of the applicant's principal  
15 place of business and every location where the applicant's  
16 business is conducted; and

17 (3) any other information the department may  
18 require.

19 E. A person engaging in business as a distributor  
20 or manufacturer or a combination of these activities shall  
21 obtain a separate license for each activity.

22 F. A license may not be granted, maintained or  
23 renewed if any of the following conditions applies to the  
24 applicant:

25 (1) the applicant owes five hundred dollars

1 (\$500) or more in delinquent cigarette taxes;

2 (2) the applicant had a manufacturer or  
3 distributor license revoked by the department within the past  
4 two years;

5 (3) the applicant was convicted of a crime  
6 relating to cigarettes;

7 (4) the applicant was convicted of a felony;

8 (5) the applicant is a manufacturer but not a  
9 participating manufacturer as defined in Section II(jj) of the  
10 master settlement agreement and the applicant is not in  
11 compliance with the provisions of Section 6-4-13 NMSA 1978 or  
12 the Tobacco Escrow Fund Act; or

13 (6) the applicant is a manufacturer and  
14 imports cigarettes into the United States that are in violation  
15 of 19 U.S.C. 1681a or manufactures cigarettes that do not  
16 comply with the Federal Cigarette Labeling and Advertising Act,  
17 as amended.

18 G. In addition to any civil or criminal penalty  
19 provided by law, upon a finding that a licensee has violated a  
20 provision of the Cigarette Tax Act, the department may revoke  
21 or suspend the license or licenses of the licensee.

22 H. The department shall create and maintain a web  
23 site listing all current licensees and the licenses they hold  
24 pursuant to the Cigarette Tax Act.

25 I. A person engaged in the business of selling

1 cigarettes in New Mexico shall register and comply with the  
2 provisions of Section 7-1-12 NMSA 1978.

3 J. ~~[Every]~~ A person selling cigarettes in New  
4 Mexico shall furnish ~~[such]~~ information ~~[as may be]~~ requested  
5 by the department concerning that person's vending machines or  
6 other places of business where cigarettes are sold.

7 K. As used in this section, "applicant" includes a  
8 person or persons owning, directly or indirectly, in the  
9 aggregate, more than ten percent of the ownership interest in  
10 the business holding or applying for a license."

11 Section 8. Section 7-12-10 NMSA 1978 (being Laws 1971,  
12 Chapter 77, Section 10, as amended) is repealed and a new  
13 Section 7-12-10 NMSA 1978 is enacted to read:

14 "7-12-10. [NEW MATERIAL] RETENTION OF INVOICES AND  
15 RECORDS--INSPECTION BY DEPARTMENT. --

16 A. A distributor, retailer or manufacturer shall  
17 maintain copies of invoices for each of its facilities for  
18 every transaction involving a cigarette sale, purchase,  
19 transfer, receipt or consignment; provided that a retailer need  
20 not retain copies of invoices for sales of cigarettes to  
21 consumers. An invoice shall show:

22 (1) the names and addresses of all persons  
23 involved in the transaction, including sellers, purchasers,  
24 consignors and consignees; provided that if a transaction  
25 involves another facility of the same distributor, retailer or

1 manufacturer, the invoice shall show the address of that  
2 facility;

3 (2) the date;

4 (3) the price; and

5 (4) the quantity of each brand of cigarettes  
6 involved in each transaction.

7 B. Records required pursuant to Subsection A of  
8 this section shall be preserved on the premises described in  
9 the license in such a manner as to ensure permanency and  
10 accessibility for inspection at reasonable hours by the  
11 department. With the department's permission, manufacturers,  
12 distributors and retailers with multiple places of business may  
13 retain centralized records, but shall transmit duplicates of  
14 the records to each place of business within twenty-four hours  
15 upon the request of the department.

16 C. The records required pursuant to Subsection A of  
17 this section shall be retained for a period of three years from  
18 the end of the year in which the transaction occurred unless  
19 otherwise required by law to be retained for a longer period of  
20 time.

21 D. The department and the secretary of the United  
22 States department of treasury, or a designee, may inspect the  
23 reports and records required pursuant to the Cigarette Tax Act  
24 along with any stock of cigarettes in the possession of the  
25 manufacturer, distributor or retailer. The department, at its



1 sole discretion, may share those records and reports with law  
2 enforcement officials of the federal government, other states  
3 and international authorities.

4 E. The department shall have authority to enter and  
5 inspect, without a warrant during normal business hours and  
6 with a warrant during non-business hours, the facilities and  
7 records of a manufacturer, distributor or retailer.

8 F. If the department or a law enforcement officer  
9 has reasonable grounds to believe that a vehicle is  
10 transporting cigarettes in violation of the Cigarette Tax Act,  
11 the department or the law enforcement officer is authorized to  
12 stop the vehicle and to inspect it for contraband cigarettes or  
13 cigarettes in violation of the provisions of the Cigarette Tax  
14 Act. "

15 Section 9. Section 7-12-11 NMSA 1978 (being Laws 1971,  
16 Chapter 77, Section 11) is amended to read:

17 "7-12-11. EXPORT SELLERS--PHYSICAL SEGREGATION OF  
18 CIGARETTES TO BE EXPORTED. -- [~~Any person~~]

19 A. A distributor selling and shipping cigarettes  
20 outside New Mexico may maintain unstamped [~~cigarettes~~]  
21 cigarette packages on [~~his~~] the distributor's premises if the  
22 unstamped [~~cigarettes~~] packages to be shipped outside the state  
23 are kept in a separate part of [~~his~~] the distributor's place of  
24 business, physically segregated from cigarettes to be sold  
25 inside New Mexico and clearly identified as cigarettes for

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1 shipment outside the state. Unstamped cigarette packages shall  
2 not be transferred by a distributor to another facility of the  
3 distributor or to another person within New Mexico. If  
4 cigarettes to be sold outside New Mexico are intermingled with  
5 cigarettes to be sold inside New Mexico, they shall be stamped  
6 and treated for purposes of the Cigarette Tax Act as cigarettes  
7 to be sold inside New Mexico.

8 B. A person doing business as both a distributor  
9 and a retailer shall maintain separate areas for stamped and  
10 unstamped cigarette packages."

11 Section 10. Section 7-12-12 NMSA 1978 (being Laws 1971,  
12 Chapter 77, Section 12, as amended) is amended to read:

13 "7-12-12. SHIPMENT OF UNSTAMPED CIGARETTES IN NEW  
14 MEXICO. --

15 A. A person that ships unstamped cigarette packages  
16 into New Mexico other than to a licensed distributor shall  
17 first file a notice of the shipment with the department.

18 B. A person that transports unstamped cigarette  
19 packages into or within New Mexico shall carry, in the  
20 transporting vehicle, invoices or equivalent documents  
21 applicable to all cigarettes in the shipment. The invoices or  
22 documents shall show the name and address of the consignor or  
23 seller, the name and address of the consignee or purchaser and  
24 the quantity of each brand of cigarettes transported.

25 C. The provisions of Subsections A and B of this

1 section shall not apply to a common or contract carrier  
2 transporting cigarettes through New Mexico to another location  
3 under a proper bill of lading or freight bill that states the  
4 quantity, source and destination of the cigarettes.

5 D. The [~~secretary~~] department may, by regulation,  
6 require and prescribe the contents of reports to be filed with  
7 the department by persons transporting unstamped [~~cigarettes~~]  
8 cigarette packages in New Mexico. "

9 Section 11. Section 7-12-13 NMSA 1978 (being Laws 1971,  
10 Chapter 77, Section 13, as amended) is repealed and a new  
11 Section 7-12-13 NMSA 1978 is enacted to read:

12 "7-12-13. [NEW MATERIAL] CIVIL PENALTIES. --

13 A. Whoever knowingly omits, neglects or refuses to  
14 comply with the provisions of the Cigarette Tax Act shall, in  
15 addition to any other penalty provided in that act, be liable  
16 for a penalty up to one thousand dollars (\$1,000).

17 B. Whoever fails to pay a tax imposed pursuant to  
18 the Cigarette Tax Act at the time due shall, in addition to any  
19 other penalty provided in that act, be liable for a penalty of  
20 five hundred percent of the tax due but unpaid.

21 C. Cigarettes held for sale or distribution within  
22 New Mexico in violation of the provisions of the Cigarette Tax  
23 Act, and the machinery used to manufacture them, shall be  
24 subject to seizure, forfeiture and destruction. "

25 Section 12. A new section of the Cigarette Tax Act is

1 enacted to read:

2 "[NEW MATERIAL] REPORTS. --

3 A. A distributor shall submit periodic reports to  
4 the department, in the manner and on the form prescribed by the  
5 department. A distributor shall submit a separate report for  
6 each of its facilities. The information in the report shall be  
7 itemized and shall clearly disclose cigarette brands,  
8 quantities and the type of stamp applied to cigarette packages.  
9 A report shall include:

10 (1) an inventory of stamped and unstamped  
11 cigarette packages held for sale or distribution within New  
12 Mexico at the beginning of the reporting period;

13 (2) the quantity of stamped cigarette packages  
14 held for sale or distribution within New Mexico that were  
15 received from another person during the reporting period and  
16 the name and address of each person from whom each quantity was  
17 received;

18 (3) the quantity of New Mexico stamped  
19 cigarette packages that were distributed or shipped to another  
20 distributor or retailer within New Mexico during the reporting  
21 period and the name and address of each person to whom each  
22 quantity was distributed or shipped;

23 (4) the quantity of New Mexico stamped  
24 cigarette packages that were distributed or shipped to another  
25 facility of the same distributor within New Mexico during the

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1 reporting period and the address of the facility;

2 (5) the quantity of stamped cigarette packages  
3 that were distributed or shipped within New Mexico to Indian  
4 tribal entities, pueblos or smoke shops or to instrumentalities  
5 of the federal government during the reporting period and the  
6 name and address of each person, entity or instrumentality to  
7 whom each quantity was distributed or shipped;

8 (6) an inventory of stamped and unstamped  
9 cigarette packages held for sale or distribution within New  
10 Mexico at the end of the reporting period;

11 (7) an inventory of cigarette packages held  
12 for sale or distribution outside of New Mexico at the beginning  
13 of the reporting period;

14 (8) the quantity of cigarette packages held  
15 for sale or distribution outside New Mexico that were received  
16 from another person during the reporting period and the name  
17 and address of each person from whom each quantity was  
18 received;

19 (9) the quantity of cigarette packages that  
20 were distributed or shipped outside New Mexico during the  
21 reporting period;

22 (10) an inventory of cigarette packages held  
23 for sale or distribution outside New Mexico at the end of the  
24 reporting period;

25 (11) the number of each type of stamp on hand

1 at the beginning of the reporting period;

2 (12) the number of each type of stamp  
3 purchased or received during the reporting period;

4 (13) the number of each type of stamp applied  
5 during the reporting period; and

6 (14) the number of each type of stamp on hand  
7 at the end of the reporting period.

8 B. A manufacturer shall submit periodic reports, in  
9 the manner and on the form prescribed by the department. The  
10 information in the report shall be itemized to clearly disclose  
11 cigarette brands and quantities. The reports shall be provided  
12 separately with respect to each of the facilities operated by  
13 the manufacturer. A report shall contain the quantity of  
14 cigarette packages that were distributed or shipped:

15 (1) to a manufacturer, distributor or retailer  
16 within New Mexico during the reporting period and the name and  
17 address of each person to whom each quantity was distributed or  
18 shipped;

19 (2) to another facility within New Mexico of  
20 the same manufacturer during the reporting period and the  
21 address of the facility; and

22 (3) within New Mexico to Indian tribal  
23 entities, pueblos or smoke shops or instrumentalities of the  
24 federal government during the reporting period and the name and  
25 address of each person to whom each quantity was distributed or

1 shipped.

2 C. The department may require additional  
3 information to be submitted. The department shall establish  
4 the reporting period, which shall be no longer than three  
5 calendar months and no shorter than one calendar month."

6 Section 13. A new section of the Cigarette Tax Act is  
7 enacted to read:

8 "[NEW MATERIAL] CRIMINAL PENALTIES. --

9 A. Whoever violates a provision of the Cigarette  
10 Tax Act or a rule promulgated pursuant to that act is guilty of  
11 a misdemeanor and shall be sentenced in accordance with the  
12 provisions of Section 31-19-1 NMSA 1978.

13 B. Whoever, with intent to defraud, fails to comply  
14 with a requirement of the Cigarette Tax Act or with a rule  
15 promulgated pursuant to that act is guilty of a fourth degree  
16 felony and shall be sentenced in accordance with the provisions  
17 of Section 31-18-15 NMSA 1978.

18 C. Notwithstanding any other provision of law, the  
19 sale or possession for sale of counterfeit cigarettes is  
20 unlawful and shall result in the seizure of the product and  
21 related machinery and be punishable as follows:

22 (1) a violation with a quantity of fewer than  
23 two cartons of counterfeit cigarettes, or the equivalent, is a  
24 petty misdemeanor punishable in accordance with the provisions  
25 of Section 31-19-1 NMSA 1978;

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1 (2) a first violation with a quantity of two  
2 cartons or more of counterfeit cigarettes, or the equivalent,  
3 is a misdemeanor punishable in accordance with the provisions  
4 of Section 31-19-1 NMSA 1978; and

5 (3) a second or subsequent violation with a  
6 quantity of two cartons or more of counterfeit cigarettes, or  
7 the equivalent, is a fourth degree felony punishable by a fine  
8 not to exceed fifty thousand dollars (\$50,000) or imprisonment  
9 for a definite term not to exceed eighteen months, or both, and  
10 shall also result in the revocation by the department of the  
11 manufacturer or distributor license, if any.

12 D. A counterfeit cigarette seized by the department  
13 or by a law enforcement agency shall be destroyed.

14 E. Prosecution for a violation of a provision of  
15 this section does not preclude prosecution under other  
16 applicable laws.

17 F. As used in this section, "counterfeit  
18 cigarettes" means cigarette packages with counterfeit stamps,  
19 cigarettes that have false or fraudulent manufacturing labels  
20 and cigarette packages without the tax or tax-exempt stamps  
21 required under the Cigarette Tax Act. "

22 Section 14. APPROPRIATION. -- Four hundred thousand dollars  
23 (\$400,000) is appropriated from the general fund to the  
24 taxation and revenue department for expenditure in fiscal year  
25 2005 to implement the provisions of this act. Any unexpended



1 or unencumbered balance remaining at the end of the fiscal year  
2 2005 shall revert to the general fund.

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